

1 regarding the voluntariness of my guilty plea were based solely on the advise of my attorney. I was not
2 fully aware of the substance of the plea agreement.

3 15. I feared for the welfare of my family and for our heavily invested family-operated
4 businesses and was confused as to what I should do that would be in the best interest of my family.

5 16. My decision to sign the plea agreement was a result of the unwavering pressure of the
6 people involved and the decision to sign was essentially imposed on me.

7 17. I am innocent of the crimes charged and wish to have my day in court to prove my
8 innocence.

9 18. This affidavit has been read to me in Korean by a fully-qualified interpreter and is consistent
10 with my intended statements made in Korean Language.

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13 
14 KWON SOON OH

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19 COMMONWEALTH OF THE NORTHERN
20 MARIANA ISLANDS,
21 SAIPAN, MARIANA ISLANDS.

ACKNOWLEDGMENT

22 On this 19th day of January, 2000, before me, a Notary Public in and for the Commonwealth
23 of the Northern Mariana Islands, personally appeared Kwon, Soon Oh, whose name is subscribed to
24 the foregoing Affidavit in Support of Motion to Withdraw Guilty Plea, and who acknowledged to me
25 that he executed the same as his free will, act, and deed.

26 In Witness Whereof, I have hereunto set my hand and affixed my seal.

27 
28 NOTARY PUBLIC



3

My Commission expires on
the 27th day of Jan, 2000

A00023

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE NORTHERN MARIANA ISLANDS

UNITED STATES,

CR - 98-00044

Plaintiff,

vs.

KWON, SOON OH,
MENG, YING YU,
KWON, MO YOUNG,

Defendants.

**AFFIDAVIT IN SUPPORT OF
MOTION TO WITHDRAW
GUILTY PLEA**

I, Meng, Ying Yu, being duly sworn, deposes and says:

1. I am one of the defendants in the above-entitled matter. I am also operating a business on Saipan along with my family.

2. Defendant Kwon, Soon Oh is my husband and Defendant Kwon, Mo Young is my husband's son.

3. After we were indicted on various criminal charges, I was in a state of near shock of the crimes charged against me and my family, and at the potential penalties and potential imprisonment time, and being separated from my five-year son.

4. My husband and his son and myself were represented separately by three different attorneys

5. On October 4, 1999, I signed a plea agreement and pleaded guilty to Count One of the second revised indictment, for the charge of Conspiracy to violate Laws, i.e., involuntary servitude, extortion and transportation for immoral purposes, 18 U.S.C. § 371, which carries a maximum penalty of five (5) imprisonment, a fine of \$250,000, or both.

6. Between the period of the indictment date and my signing of the plea agreement, we had several meetings with all the lawyers involved, including the government attorneys. In some cases, we

A00034

1 were all placed in separate rooms and I was continually advised that pleading guilty was the appropriate
2 thing to do. My own attorney, whom I met confidentially on only two occasions, at this time, did not
3 advise me on the merits of the charge and on the strengths of my case. The only advice I received was
4 to consider my family, especially my five-year old son, and what would happen to them and myself if
5 I did not cooperate and sign a plea agreement.

6 7. Throughout the meetings with the other attorneys for my wife and my son, I had declared my
7 innocence to the charges alleged in the indictment.

8 8. However, there was so much pressure to enter into a plea agreement because according to the
9 attorneys, they cannot help it if I was in fact innocent and are victimized by the judicial process by being
10 wrongly convicted. Prior to signing the plea agreement, I again declared my innocence and rejected the
11 plea agreement but went ahead and reluctantly signed the document under pressure.

12 9. A translator was present throughout the meetings and the contents of the plea agreement were
13 also translated. However, the plea agreement I signed was not the same document, that I had viewed
14 and was translated, as the plea agreement document that was relied during the series of meetings. I was
15 not completely sure about the meaning of the plea agreement nor did I fully understand that I could
16 challenge the charges without being wrongly convicted.

17 10. I was further confused by the consultations I was receiving from the attorneys involved
18 and from my family regarding the signing of the plea agreement. At one point during the plea
19 negotiations, the government attorney stated that I had "no chance of winning this case" while my own
20 attorney sat next to me silently. According to the government attorney, one of the government's witness
21 had fainted during an interview, a strong indication that we had done some wrong to them.

22 11. I was pressured to sign the document because the government had set a deadline to accept
23 the plea, a deadline that was extended into the evening hours so that we could be convinced to sign the
24 plea agreement.

25 12. When I appeared before the court for the plea agreement hearing, I answered the court's
26 questions according to the advice of my attorney. My answers to the court-translated statements
27
28

1 regarding the voluntariness of my guilty plea were based solely on the advise of my attorney. I was no
2 fully aware of the substance of the plea agreement.

3 13. I feared for the welfare of my family, especially my five-year old child, and for our heavily
4 invested family-operated businesses and was confused as to what I should do that would be in the best
5 interest of my family.

6 14. My decision to sign the plea agreement was a result of the unwavering pressure of the
7 people involved and the decision to sign was essentially imposed on me.

8 15. I am innocent of the crimes charged and wish to have my day in court to prove my
9 innocence.

10 16. This affidavit has been read to me in Korean by a fully-qualified interpreter and is consistent
11 with my intended statements made in Korean Language.



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15 MENG, YING YU
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19 COMMONWEALTH OF THE NORTHERN
20 MARIANA ISLANDS,
21 SAIPAN, MARIANA ISLANDS.

ACKNOWLEDGMENT

22
23 On this 9th day of January, 2000, before me, a Notary Public in and for the Commonwealth
24 of the Northern Mariana Islands, personally appeared Meng, Ying Yu, whose name is subscribed to the
25 foregoing Affidavit in Support of Motion to Withdraw Guilty Plea, and who acknowledged to me that
26 he executed the same as his free will, act, and deed.

27 In Witness Whereof, I have hereunto set my hand and affixed my seal.

28 
NOTARY PUBLIC


3

48

My Commission expires on
the 27th day of Jan, 2000

A00026

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE NORTHERN MARIANA ISLANDS

UNITED STATES,

CR - 98-00044

Plaintiff,

vs.

KWON, SOON OH,
MENG, YING YU,
KWON, MO YOUNG,

AFFIDAVIT IN SUPPORT OF
MOTION TO WITHDRAW
GUILTY PLEA

Defendants.

I, Kwon, Mo Young, being duly sworn, deposes and says:

1. I am one of the defendants in the above-entitled matter. I am also operating a business on Saipan along with my family.

2. Defendant Kwon, Soon Oh, is my father and Defendant Meng, Ying Yu is his wife.

3. After we were indicted on various criminal charges, I was in a state of near shock of the crimes charged against me and my family, and at the potential penalties and potential imprisonment time, considering that, at the age of 26, I felt that I had so much ahead of me.

4. My father and his wife and myself were represented separately by three different attorneys.

5. On October 4, 1999, I signed a plea agreement and pleaded guilty to Count Twenty-One of the second revised indictment, for the charge of the Mann Act, Aiding and Abetting, 18 U.S.C. §§ 2421 and 22, which carries a maximum penalty of five (5) years imprisonment, a fine of \$250,000, or both.

6. Between the period of the indictment date and my signing of the plea agreement, we had a series of meetings with all the lawyers involved, including the government attorneys. In some cases, we were all placed in separate rooms and I was continually advised that pleading guilty was the appropriate thing to do for my family's sake. My own attorney, at this time, did not advise me on the

A00027

1 merits of the charge and on the strengths of my case. The only advice I received was to consider my
2 family and what would happen to them and myself if I did not cooperate and sign a plea agreement.

3 7. Throughout the meetings with the other attorneys for my father and his wife, I had declared
4 my innocence to the charges alleged in the indictment.

5 8. However, there was so much pressure to enter into a plea agreement because according to the
6 attorneys, they cannot help it if I was in fact innocent and are victimized by the judicial process by being
7 wrongly convicted. Prior to signing the plea agreement, I again declared my innocence and rejected the
8 plea agreement but went ahead and reluctantly signed the document under pressure.

9 9. A translator was present throughout the meetings and the contents of the plea agreement were
10 also translated. However, I was not completely sure about the meaning of the plea agreement nor did
11 I fully understand that I could challenge the charges filed against me without being wrongly convicted.

12 10. I was further confused by the consultations I was receiving from the attorneys involved and
13 from my family regarding the signing of the plea agreement. We had been advised by the government
14 attorney that we had "no chance of winning this case." My own attorney did not advise on the
15 statements made by the government attorney.

16 11. On another occasion, my own attorney stated that because we are dealing with attorneys
17 from the federal government, and because there are anti-asian sentiments from the local community, we
18 didn't stand a chance in challenging the charges filed against me.

19 12. Considering that I am not very familiar with the U.S. legal system, the statements made by
20 the attorneys involved instilled fear in me and in my hopes of fighting this case.

21 13. I was pressured to sign the document because the government had set a deadline to accept
22 the plea, a deadline that was extended into the evening hours so that we could be convinced to sign the
23 plea agreement.

24 14. When I appeared before the court for the plea agreement hearing, I answered the court's
25 questions according to the advice of my attorney. My answers to the court-translated statements
26 regarding the voluntariness of my guilty plea were based solely on the advice of my attorney. I was not
27 fully aware of the substance of the plea agreement.


28

1 15. I feared for the welfare of my family and for our heavily invested family-operated
2 businesses and was confused as to what I should do that would be in the best interest of my family.

3 16. My decision to sign the plea agreement was a result of the unwavering pressure of the
4 people involved and the decision to sign was essentially imposed on me.

5 17. I am innocent of the crimes charged and wish to have my day in court to prove my
6 innocence.

7 18. This affidavit has been read to me in Korean by a fully-qualified interpreter and is consistent
8 with my intended statements made in Korean Language.

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11 
12 KWON, MO YOUNG

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17 COMMONWEALTH OF THE NORTHERN
18 MARIANA ISLANDS,
19 SAIPAN, MARIANA ISLANDS.

ACKNOWLEDGMENT

20 On this 19th day of January, 2000, before me, a Notary Public in and for the Commonwealth
21 of the Northern Mariana Islands, personally appeared Kwon, Mo Young, whose name is subscribed to
22 the foregoing Affidavit in Support of Motion to Withdraw Guilty Plea, and who acknowledged to me
23 that he executed the same as his free will, act, and deed.

24 In Witness Whereof, I have hereunto set my hand and affixed my seal.

25 
26 NOTARY PUBLIC



27 My Commission expires on
28 the 27th day of Jan, 2000

A00029

DELIVERED

DATE: 2/23/00

COPY of
Original Filed
on this date

FEB 23 2000

RICHARD W. PIERCE
WHITE, PIERCE, MAILMAN & NUTTING
P.O. Box 5222
Saipan, MP 96950
Telephone: (670) 234-6547
Facsimile: (670) 234-9537

Clerk
District Court
For The Northern Mariana Islands

Attorneys for Kwon, Mo Young

IN THE UNITED STATES DISTRICT COURT
FOR
THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,

Plaintiff,

-v-

KWON SOON OH, KWON MO
YOUNG, and MENG YING YU,

Defendants.

CRIMINAL CASE NO. CR. 98-00044

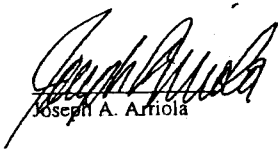
SUBSTITUTION OF COUNSEL

WHITE, PIERCE, MAILMAN & NUTTING
ATTORNEYS AT LAW
POST OFFICE BOX 5222
SAIPAN, MARIANA ISLANDS 96950

In accordance with the directions of Mo Young Kwon and Ninth Circuit Rule 4-1,
Joseph A. Arriola hereby substitutes as counsel for Richard W. Pierce, as attorney for Mo
Yong Kwon on his appeal of the judgment of conviction entered in this case on February 18,
2000.

DATED, this February 22, 2000.

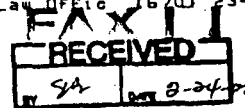

Richard W. Pierce


Joseph A. Arriola

A00030

Feb 24 00 03:46p

Jr. H. Sorensen Law Office 16701 234-1417



1 JAY H. SORENSEN
2 Attorney at Law
3 Fourth Floor, Suite A
4 Horiguchi Building, Garapan
5 P. O. Box 1184
6 Saipan, MP 96950
7 Tel. No. 234-1414
8 Fax. No. 234-1417

COPY of
Original Filed
on this date

FEB 24 2000

Clerk
District Court
For The Northern Mariana Islands

9 Attorney for Defendant Meng Ying Yu

10
11 UNITED STATES DISTRICT COURT
12 FOR THE
13 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 vs.

17 KWON SOON OH, KWON MO YOUNG,
18 and MENG YING YU,

19 Defendants.

CRIMINAL CASE NO. CR 98-00044

SUBSTITUTION OF COUNSEL

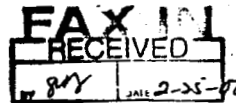
20 In accordance with the directions of Meng Ying Yu and Ninth Circuit Rule 4-1,
21 Joseph A. Arriola hereby substitutes as counsel for Jay H. Sorensen, as attorney for Meng
22 Ying Yu on her appeal of the judgment of conviction entered in this case on February 18,
23 2000.

24 Dated this 24th day of February, 2000.

25
26 JAY H. SORENSEN

27 JOSEPH A. ARRIOLA

28
A00031



COPY of
Original Filed
on this date

FEB 25 2000

Clerk
District Court
For The Northern Mariana Islands

1 Eric S. Smith
2 Horiguchi Building
3 Fourth Floor
4 P.O. Box 5133
5 Saipan, MP 96950
6 Tel: 233-3334
7 Fax: 233-3336
8 Attorney for Defendant Kwon, Soon Oh

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IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,

Plaintiff,

v.

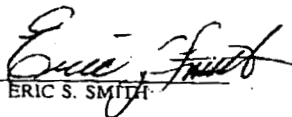
KWON, SOON OH,
KWON MO YOUNG, and
MENG YING YU,

Defendants.

CRIMINAL CASE NO. CR-98-00044

SUBSTITUTION OF COUNSEL

In accordance with the directions of Kwon, Soon Oh and Ninth Circuit Rule 4-1,
Joseph A. Arriola hereby substitutes as counsel for Eric S. Smith, as attorney for Kwon, Soon
Oh on his appeal of the judgment of conviction entered in this case on February 18, 2000.


ERIC S. SMITH

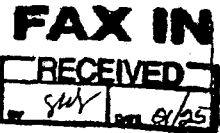

JOSEPH A. ARRIOLA

A00032

Jan 25 00 05:10p

Jay H. Sorensen Law Office (670) 234-1417

P.1



COPY of
Original Filed
on this date

JAN 25 2000

Clerk
District Court
For The Northern Mariana Islands

JAY H. SORESENSEN
Attorney at Law
Fourth Floor, Suite A
Horiguchi Building, Garapan
P. O. Box 1184
Saipan, MP 96950
Tel. No. 234-1414
Fax. No. 234-1417

Attorney for Defendant Meng Ying Yu

UNITED STATES DISTRICT COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KWON SOON OH, KWON MO YOUNG,
and MENG YING YU,

Defendants.

CRIMINAL CASE NO. CR 98-00044

REQUEST TO WITHDRAW
AS COUNSEL

Date: JAN 27, 2000

Time: 9:30 AM

Jay H. Sorensen, counsel appointed by the court for Meng Ying Yu, hereby requests that Court to withdraw as counsel. This request is made pursuant to Local Rule 83.5(g), and is based on the fact that defendant has retained other counsel and has filed a motion to withdraw her plea, and on the further ground that the statements contained in defendant's affidavit supporting her motion to withdraw the plea indicate that communication and trust between counsel and client have broken down to the point that effective assistance is no longer possible.

Respectfully submitted,

JAY H. SORESENSEN
Attorney for Meng Ying Yu

A00033

JAN-24-00 13:37 FROM: WPMAN ATTY

ID: 6702349537

PAGE 2/2

FAX IN

01/24/00

RICHARD W. PIERCE
WHITE, PIERCE, MAILMAN & NUTTING
P.O. Box 5222
Saipan, MP 96950
Telephone: (670) 234-6547
Facsimile: (670) 234-9537

Attorneys for Mo Young Kwon

IN THE UNITED STATES DISTRICT COURT
FOR
THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,

Plaintiff,

-v-

KWON SOON OH,
KWON MO YOUNG, and
MENG YING YU,

Defendants.

CRIMINAL CASE NO. CR. 98-00044

REQUEST TO WITHDRAW AS
COUNSEL

Date: 1/24/2000
Time: 9:00 a.m.
Judge: Munson

WHITE, PIERCE, MAILMAN & NUTTING
ATTORNEYS AT LAW
POST OFFICE BOX 5222
SAIPAN, MARIANA ISLANDS 96950

NOW COMES Richard W. Pierce of the law firm of White Pierce Mailman & Nutting and requests to withdraw as counsel for Mo Young Kwon. Mr. Kwon has retained other counsel to represent him, as shown by the Entry of Appearance of Joseph A. Arriola, filed with this Court on January 20, 2000. The retention of Mr. Arriola and the filing for a withdrawal of plea, coupled with the filed affidavit of Mr. Kwon, are materially inconsistent with continued representation by Richard W. Pierce. Further, professional considerations require termination of the representation.

DATED, this January 21, 2000.

Respectfully Submitted:

WHITE, PIERCE, MAILMAN & NUTTING

RWP

RICHARD W. PIERCE
Attorney at Law

A00034

Kwon, Soon Oh
00223-005

\$3,000.00

27-644 Moore's Federal Practice -- Criminal Procedure § 644.01

Moore's Federal Practice - Criminal
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Group.

Chapter 644 Right to and Appointment of Counsel

A SOURCES OF RIGHT TO COUNSEL

27-644 Moore's Federal Practice -- Criminal Procedure § 644.01

§ 644.01 Text of Constitutional Amendments, Rule, and Statute

[1]-- Fifth Amendment, United States Constitution

[2]-- Sixth Amendment, United States Constitution

Amendment VI. Jury Trial for Crimes, and Procedural Rights.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

[3]-- Criminal Rule 44

Rule 44. Right to and Appointment of Counsel.

(a)--Right to Appointed Counsel. A defendant who is unable to obtain counsel is entitled to have counsel appointed to represent the defendant **at every stage of the proceeding** from initial appearance through appeal, unless the defendant waives this right.

(b)--Appointment Procedure. Federal law and local court rules govern the procedure for implementing the right to counsel.

(c)--Inquiry Into Joint Representation.

(1)--Joint Representation. Joint representation occurs when:

(A)-- two or more defendants have been charged jointly under Rule 8(b) or have been joined for trial under Rule 13; and

(B)-- the defendants are represented by the same counsel, or counsel who are associated in law practice.

A00035

ORIGINAL

FILED
U.S. DISTRICT COURT
SAIPAN

JAN 15 2000

IN THE UNITED STATES DISTRICT COURT

For The Honorable Alex R. Munson

FOR THE NORTHERN MARIANA ISLANDS

(Deputy Clerk)

| | | | |
|----|------------------------------|---|----------------------------|
| 1 | | | |
| 2 | UNITED STATES OF AMERICA, |) | CRIMINAL CASE NO. 98-00044 |
| 3 | |) | |
| 4 | Plaintiff, |) | Thursday, January 27, 2000 |
| 5 | |) | |
| 6 | vs. |) | Garapan, Saipan |
| 7 | |) | |
| 8 | SOON OH KWON, MO YOUNG KWON, |) | REPORTER'S TRANSCRIPT |
| 9 | and YING YU MENG, |) | OF |
| 10 | |) | DEFENDANTS' MOTION TO |
| 11 | Defendants. |) | WITHDRAW PLEAS AND MOTION |
| 12 | |) | TO WITHDRAW AS COUNSEL |

BEFORE THE HONORABLE ALEX R. MUNSON
CHIEF JUDGE, UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

APPEARANCES:

For Plaintiff: Lou de Baca, Prosecuting Attorney, appearing telephonically
U. S. Department of Justice
Civil Rights Division, Criminal Section
601 D Street, N.W.
Washington, D.C. 20503
Telephone: (202) 514-3204
Facsimile: (202) 514-8336
and
Gregory Baka, Local Counsel
Assistant United States Attorney
NORTHERN MARIANAS DISTRICT
Horiguchi Building, Third Floor
P. O. BOX 500377
Saipan, MP 96950-0377
Telephone: (670) 236-2986
Facsimile: (670) 236-2945

For Defendants: Joseph A. Arriola, Esq.
Soon Oh Kwon, PPP 678, PMB 10000
Mo Young Kwon, & Garapan, Saipan 96950-8900
Ying Yu Meng Telephone: (670) 233-5501/02
Facsimile: (670) 233-5503

SANAE N. SEMULL
Official Court Reporter
P. O. BOX 5128
SAIPAN, MP 96950-5128

A00036

184

1 For Defendant: Richard W. Pierce, Esq.
Mo Young Kwon WHITE, PIERCE, MALLMAN & NUTTING
2 P. O. Box 5222
San Jose, Saipan, MP 96950
3 Telephone: (670) 234-6547/6548/8604
Facsimile: (670) 234-9537

4 For Defendant: Mark Williams, Esq. (for Mr. Smith)
5 Soon Oh Kwon P. O. Box 5133
Saipan, MP 96950-5133
6 Telephone: (670) 233-3334
Facsimile: (670) 233-3336

7 For Defendant: Jay H. Sorensen, Esq.
8 Ying Yu Meng P. O. Box 1184
Saipan, MP 96950-1184
9 Telephone: (670) 234-1414/15/16
Facsimile: (670) 234-1417

10 Also Present : Defendants Soon Oh Kwon, Mo Young Kwon &
11 Ms. Ying Yu Meng

12 Korean Interpreter: Kwon, Soon Young
13
14
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16
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19
20
21
22
23

24 SARA E. N. SHMULL
Official Court Reporter
P. O. BOX 5128
SAIPAN, MP 96950-5128
25

A00037

1 GARAPAN, SAIPAN, THURSDAY, JANUARY 27, 2000 - 10:00 A.M.

2 -ooo-

3 THE CLERK: Pleas rise. The United States District Court for
4 the Northern Mariana Islands is now open and ready for transaction
5 of business; the Honorable Alex R. Munson, Chief Judge presiding.

6 THE COURT: Good morning, counsel, ladies and gentlemen.
7 Please be seated.

8 THE CLERK: Your Honor, please, this is Criminal Case 98-
9 00044, *United States of America v. Kwon, Soon Oh, Kwon, Mo Young,*
10 *and Meng, Ying Yu*, coming up for a hearing on a Motion to Withdraw
11 as Counsel and Motion to Withdraw Guilty Pleas.

12 Will Counsel, please, state your appearance?

13 MR. de BACA: Your Honor, for the United States, Lou de Baca
14 on the phone and Gregory Baka in court.

15 THE COURT: Thank you.

16 MR. ARRIOLA: Your Honor, for the defendants, Joseph A.
17 Arriola.

18 MR. PIERCE: Dick Pierce on behalf of White, Pierce, Mailman &
19 Nutting in the Motion to Withdraw as Counsel.

20 MR. SORENSEN: Jay Sorensen.

21 MR. WILLIAMS: Mark Williams appearing for Eric Smith.

22 THE COURT: All right, the record will also reflect that all
23 three defendants are present in court with Mr. Arriola at defense
24 counsel table.

25 Are you an interpreter-translator?

A00048

1 THE INTERPRETER: Yes, sir.

2 THE COURT: And what is your name, please?

3 THE INTERPRETER: My name is Kwon, last name, Soon Young.

4 THE COURT: I would ask the clerk to please administer the
5 oath to Mr. Kwon.

6 THE CLERK: Mr. Kwon, please rise and raise your right hand.
7 Do you solemnly swear that you will justly, truly, fairly, and
8 impartially act as an interpreter in this case now before this
9 court, so help you God?

10 THE INTERPRETER: Yes.

11 THE COURT: Before I hear from anybody, I have a tentative
12 ruling to announce and some reasons for that ruling.

13 The tentative ruling, obviously, would be to allow Mr.
14 Arriola to act as counsel for the three defendants if the three
15 defendants can satisfy the court that they have knowingly,
16 intelligently, and voluntarily waived any conflicts and problems
17 that there might be.

18 The other tentative ruling would be to not allow Mr.
19 Pierce, Mr. Sorensen, or Mr. Smith to be relieved as counsel of
20 record in the sense that I would appoint Mr. Pierce as counsel for
21 the court to sit by in the event that there is any problem at
22 sentencing, because it is the tentative ruling of the court not to
23 grant the motion to withdraw the plea of guilty. I did not see any
24 moving papers, any reason that the court would allow the withdrawal
25 of the plea.

A00089

1 Even if everything were true in the affidavits of the
2 defendants, I do not believe that there would be good and just and
3 sufficient reason to allow the defendants to withdraw their guilty
4 pleas, because in court, under oath, they were advised of every
5 aspect that is required for them to enter knowing, intelligent, and
6 voluntary pleas. They assented to every element of the crime to
7 which they pled guilty. They swore under oath that they were not
8 under any threat or no one forced them to enter pleas of guilty,
9 that no promises or assurances were made to them. They were
10 advised of the maximum possible penalties. They were advised of
11 their constitutional rights. They told the court that they were,
12 that they understood those rights, that they didn't have any
13 questions about those rights. And the court made a finding that
14 the pleas were knowing, voluntarily, and intelligently made, and
15 the court accepted those pleas. The court accepted the plea
16 agreements and judged them guilty of the offense.

17 Although it was not stated in any opposition, I expect to
18 hear from Mr. de Baca relative to any prejudice that may fall upon
19 the government to try this case.

20 I know that's a long tentative ruling, but those are the
21 court's thoughts. And I'll hear from Mr. Arriola at this time.

22 MR. ARRIOLA: Thank you, Your Honor. As set forth in our
23 moving papers and the attached affidavits, we believe that even
24 though they had appeared before Your Honor in a change of plea
25 hearing, and that they stated their answers in the affirmative with

A06649

1 regards to their understanding of the plea, it is really based on
2 the affidavits. Their contention is that they really were just
3 following the advice of their attorneys. They have declared their
4 innocence in the beginning and they've maintained that.

5 THE COURT: Well, now that's simply not true. You have just
6 made a statement that they have maintained their innocence, and
7 they had a hearing, each, that lasted over an hour where they
8 admitted every element of the crime to which they pleaded guilty.
9 So you can't say that.
10

11 MR. ARRIOLA: Your Honor, I'm just going by what the defendants
12 have related to me that --

13 THE COURT: Did you review the transcript of the sentencing
14 (sic) hearing on any of the defendants?
15

16 MR. ARRIOLA: No, Your Honor, I didn't; I didn't have time to
17 do that.

18 THE COURT: All right.

19 MR. ARRIOLA: But I did have a very lengthy meeting with them,
20 going over what had transpired here. And I am aware of Your
21 Honor's statements about what, what questions were asked of the
22 defendants. And I did discuss that with them, and they did admit
23 that they did answer in the affirmative. But, again, their
24 statement, they contend that despite all of their answers, they
25

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1 just were in a state of shock and they were in fear. They feared
2 because they were in fear of all the charges, the fear of the
3 statements that were made by the U.S. Government's attorneys, and
4 even by their own attorneys. And it seemed to them, at least,
5 during those times that they had a hopeless case and didn't know
6 what to do.
7

8 They did answer, Your Honor, "yes." I know that you went
9 through the whole process and that's because you wanted to make
10 sure that it's knowing and voluntary. But that's not what they
11 stated to me. They just simply didn't know what to do. They were
12 just following the advice. And even if they did understand the
13 language through their interpreter, the language of all these
14 charges and what Your Honor has stated, it seems like they didn't
15 understand the implication of what they were getting themselves
16 into.
17

18 THE COURT: Well, see, I don't see how you can stand here and
19 express that to the court when you did not review the transcript
20 because the court painstakingly explained to them exactly what the
21 maximum penalty was including incarceration, fine, restitution,
22 disgorgement of profits of supervised release, of deportation. And
23 to say that they didn't understand that when they expressed that
24 they did under oath, it's very hard for me to accept.
25

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1 MR. ARRIOLA: Your Honor, all they ask is that they have their
2 day in court. I don't think there's any prejudice to the
3 government. They have done their, they prepared thoroughly in this
4 case. I think that if they believe -- based on the affidavits that
5 they, that they have a good case, then they should just go forward
6 with their burden and just allow the defendants an opportunity to
7 defend themselves in this court.
8

9 THE COURT: I also forgot to mention that I want to throw in
10 the equation, number one, if they do change their position that
11 they are innocent of all charges, that they cannot in all
12 probability get the three-point reduction for acceptance of
13 responsibility. That's totally inconsistent.
14

15 The other concern that I have is if they have hired you
16 after they have expressed to the court that they don't have the
17 financial wherewithal to hire private attorneys, and that they were
18 represented under the Civil Justice Act, and their attorneys were
19 paid by the court, if they have the financial wherewithal, I would
20 expect that they pay their attorneys' fees at their attorneys
21 regular rate, not under the court's Civil Justice Act rate.
22

23 So I want to ask you about that. They hired you and I
24 assume you're charging your regular fees?
25

MR. ARRIOLA: That's correct, Your Honor. I did inquire about

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1 that because I was also concerned about the fact that, that this
2 court did appoint Mr. Smith and Mr. Sorensen as the court appointed
3 counsel for Meng, Ying Yu and Kwon, Soon Oh, and I inquired about
4 that in our meetings. What I understood, based on my clients'
5 representations, is that they initially had retained Mr. Pierce and
6 the initial agreement was for Mr. Pierce to represent all three
7 defendants. And then there was the court appointed counsels (sic).
8 And according to them, it was simply that, the representation I got
9 was that the court felt that there may be potential conflict among
10 the three defendants, and on that basis appointed the counsel. But
11 initially when this case started, they approached Mr. Pierce and
12 asked that Mr. Pierce represent all three of them. That's my
13 understanding.
14

16 THE COURT: Well, but that doesn't answer my question. My
17 question is, are they paying you at your regular rate?

18 MR. ARRIOLA: Yes, Your Honor.

19 THE COURT: Well, --
20

21 MR. de Baca: Your Honor, if I may speak to this very briefly,
22 and obviously this is something that we're not necessarily going to
23 get into the middle of on the part of the government. But it seems
24 to me as well, from looking at the presentence reports, that the
25 defendants reiterated their poverty in their sworn interviews, or

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